



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
CHARLES SHANNON WARREN,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 1995SF0776
)	EEOC NO: 21B952150
FLEMING-POTTER CO., INC.,)	ALS NO: S-10260
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes to me on the parties' status reports which indicate that they have resolved the remaining issue of back pay in this case. However, Complainant after agreeing to settle the case, refused to accept Respondent's check for back pay because withholding taxes were taken out of the agreed amount.

Contentions of the Parties

Respondent contends that the parties have a binding, enforceable agreement to settle this case. Respondent further contends that Complainant breached the agreement when he refused their full payment of the agreed amount of back pay because it withheld income tax from the check, despite the fact the agreement provided for taxes to be withheld from the amount of back pay.

Complainant agrees that the parties settled this case but refuses to accept payment of the agreed amount of back pay from Respondent because it withheld income taxes from the settled amount. Complainant further contends this is an illegal withholding of his entitled property and further alleges criminal activity by Respondent.

Findings of Fact

The following findings of fact were derived from the record in this matter:

1. On May 5, 1995, Complainant Charles Shannon Warren filed a charge of discrimination with the Illinois Department of Human Rights (Department) against his employer Respondent Fleming Potter Company, Inc.
2. On December 9, 1997, the Department filed a Complaint of Civil Rights Violation on Complainant's behalf alleging he was aggrieved by practices of handicap discrimination as prohibited by section 2-102(A) of the Illinois Human Rights Act.
3. During a telephone conference call on March 20, 1998, Administrative Law Judge Carol Kirbach granted the parties' joint oral motion to stay this case because an arbitrator had already reinstated Complainant to his job with Respondent and the case remained pending before the arbitrator on the issue of back pay. Once the back pay issue was resolved, Complainant would have received full relief under the complaint pending before the Commission.
4. On January 2, 2001, Complainant and Respondent signed a settlement agreement which provided that Complainant would receive back pay in the amount of \$57, 281.50 "less usual and customary payroll deductions."
5. On January 15, 2001, Complainant and Respondent signed an agreed 14 day distribution extension to allow Complainant time to seek tax advice on the settlement amount. The agreement provided that Respondent would not extend payment to Complainant until January 25, 2001.
6. On February 21, 2001, Respondent filed a revised status report with the Commission which indicated that the parties settled the back pay amount owing to Complainant, but that Complainant refused the tendered check because Respondent withheld income tax from the agreed amount.

7. Complainant filed a response to the report and indicated he did agree to the settled amount but now did not want to accept the check because Respondent withheld income tax from the check. His status report included language that the settlement was not binding because of the illegal withholding of income tax.

Conclusions of Law

1. The Commission has jurisdiction over the parties and the subject matter of this action.
2. If a valid settlement agreement is entered into by an employee and employer, an employee may waive his right to further prosecute a discrimination claim in return for money.
3. An agreement covering a discrimination claim is enforceable where there is a clear offer, acceptance and a meeting of the minds as to the terms of the agreement.
4. The Illinois Human Rights Commission lacks jurisdiction to enforce settlement agreements entered into between the parties, but may dismiss a case upon the clear existence of a settlement agreement.

Determination

This matter should be dismissed with prejudice because the record establishes that the parties reached a settlement of Complainant's discrimination claim in exchange for a monetary sum.

Discussion

The issue in this case is one of breach of contract and enforcement. The parties in this matter both agree that they have resolved the underlying discrimination issues in this case in return for Complainant's reinstatement to his job and \$57, 281.50 in back pay for lost wages. However, Complainant now refuses to accept payment for back pay because Respondent withheld income tax from his check.

The Commission has held that it does not have the jurisdiction to enforce clear settlement agreements between the parties. See, **Marty Watkins and State of Illinois**

Department of Corrections , ___ Ill. HRC Rep. ___, Charge No. 1990CF1303 (June 2, 1999);

Ellen E. Plater and Southeastern Illinois College, ___ Ill. HRC. Rep. ___, Charge No.

1998SF0297 (February 2, 2001). Specifically, in **Watkins** the Commission determined it did not have jurisdiction to enforce the settlement because under its procedural rules, jurisdiction could only be vested in the Commission if the parties sought approval of the settlement *prior to* entering into an agreement. Since the Commission determined that the parties did not vest jurisdiction in it for enforcement, then all the Commission had the authority to do was determine if the terms of the settlement prevented further prosecution of the case. *Id at 7*. The Commission further held that Complainant's prosecution of the claim was precluded because the parties had entered into a valid contract for settlement. Therefore, the parties would have to seek enforcement in circuit court.

Likewise, in the case at bar it is undisputed that the parties had a meeting of the minds and entered into a valid signed contract to settle this dispute on January 2, 2001. There is no evidence that the parties sought approval of the settlement agreement from the Commission. Therefore, under the Commission precedent established in *Marty Watkins and State of Illinois Department of Corrections* ___ Ill. HRC Rep. ___, Charge No. 1990CF1303 (June 2, 1999) and the Illinois Administrative Code, neither the Commission nor I have the authority to enforce the agreement between the parties. That authority only vests in the Commission if the parties propose a written settlement for the Commission to consider and approve or reject. See, 77 Ill Admin Code 5300.310, et seq. However, even in that instance the only relief the Commission can give to a party is to request that the Illinois Attorney General seek enforcement of the claim in circuit court.

No evidence has been presented that the parties agreed that the Commission should approve the parties' signed settlement agreement. Now the parties may only seek enforcement of the written settlement agreement on their own in circuit court. Accordingly, for the reasons

set forth above, and upon the existence of a signed settlement agreement, Complainant is precluded from further prosecuting his case before the Commission and the case must be dismissed.

Recommendation

Based on the above findings of fact and conclusions of law, I recommend that the Illinois Human Rights Commission dismiss with prejudice the complainant of Charles Shannon Warren against Fleming Potter Company, Inc., together with the underlying charge of discrimination.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THE 30TH DAY OF SEPTEMBER, 2002.